80-504

Supreme Court U.S.
FILED
AUG 29 1980
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT OF THE
UNITED STATES
OCTOBER TERM, 1980

No.

BERNARD LAUFGAS, Petitioner

v.

THE STATE OF NEW JERSEY

PETITION FOR A WRIT OF CERTIORARI TO
THE SUPERIOR COURT OF NEW JERSEY,
APPELLATE DIVISION

Bernard Laufgas
PO Box 98
Barnegat, New Jersey 08005
Pro Se

Dated: August 26, 1980

QUESTIONS PRESENTED

I. Does the due process clause of the Fourteenth Amendment to the United States Constitution require a public college to provide a hearing to a former student prior to permanently excluding that former student from college grounds where the college's facilities are generally open to the public at large for a variety of functions?

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PETITION FOR A WRIT OF CERTIORARI TO
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APPELLATE DIVISION

Petitioner, Bernard Laufgas, respectfully prays that a Writ of Certiorari issue to review the judgment and opinion of the Superior Court of New Jersey, Appellate Division, entered in this proceeding on February 29, 1980.

Opinion Below

The opinion of the Appellate Division, not reported, appears in the Appendix hereto.

JURISDICTION

The judgment of the Appellate Division was entered on February 29, 1980. A timely Petition for Certification in the Supreme Court of New Jersey was denied on May 28, 1980, and this Petition for Certiorari was filed within 90 days of that date. This Court's jurisdiction is involved under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

I. Does the due process clause of the Fourteenth Amendment to the United States Constitution require a public college to provide a hearing to a former student prior to permanently excluding that former student from college grounds where the college's facilities are generally open to the public at large for a variety of functions?

CONSTITUTIONAL PROVISION INVOLVED

United States Constitution, Amendment XIV:

"Section 1. All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

STATEMENT OF THE CASE

On February 3,1978, Kenneth Kerr, the Dean of Students of Ocean County College, wrote a letter to Petitioner, Bernard Laufgas. The letter banned Petitioner from the campus on a permanent basis. The letter also warned Petitioner that he would be considered a trespasser if he were to come on the campus without permission. The letter was issued unilaterally by Dean Kerr: there was no hearing nor has one ever been granted even though Petitioner has repeatedly requested such a hearing on this matter. Petitioner has made two written requests for a hearing. Those requests are dated February 10, 1978 and June 7, 1978. On February 9, 1978, Petitioner, without prior permission, entered upon the campus and entered Dean Kerr's office. As a result of Petitioner entering the campus he was convicted on a charge of trespass (N.J.S.A. 2A:170-31). A Petition for a Writ of Certiorari concerning the first trespass conviction has been filed with the Supreme Court of the United States (LAUFGAS vs New Jersey - No 79-1799).

On July 7, 1978, Petitioner drove his car onto the main parking lot of Ocean County College. The purpose of Petitioner's visit to the college was to obtain copies of his educational records so that Petitioner could transfer to another educational institution. Petitioner approached the security booth and asked the guard to have someone obtain an application form from the administrative office. Petitioner stated that he did not want to enter any of the administrative offices himself. The guard placed a phone call to the administrative office. Several minutes later the Chief Security Officer came out to speak to Petitioner. Petitioner repeated his request to the Chief Security Officer. The officer informed Petitioner that he would try to see what could be done. The officer left the Parking lot to go into the administrative office.

When the Chief Security Officer returned, he informed Petitioner that Petitioner would not be allowed to fill out an application form, and further more, the officer informed Petitioner that the police had been contacted. Petitioner waited for the Police to arrive.

When the Police arrived, they informed Petitioner that criminal charges would filed against him. The Police instructed Petitioner to meet them at the police station, so that charges could be filed. Petitioner complied with these instructions.

Petitioner was charged with trespassing on the Campus of Ocean County College contrary to the provisions of N.J.S.A. 2A:170-31.

On October 12, 1978, the Petitioner appeared before the Honorable Mortner A. Rogers in Dover Township Municipal Court, and entered a plea of not guilty to trespassing. Petitioner was convicted on the charge of trespassing (N.J.S.A. 2A:170-31) and fined $50.00. Petitioner appealed to the Superior Court, Ocean County, law division.

On March 23, 1979, the Honorable William H. Huber J.S.C., found Petitioner guilty in a plenary trial de novo and reduced the fine to $25.00.

The Petitioner subsequently filed his Notice of Appeal to the Appellate Division of the New Jersey Superior Court. On February 29, 1980, the Appellate Division filed a per curiam opinion affirming the conviction for trespassing.

The Appellate Division rejected Petitioner's claim arising under the due process clause of the Fourteenth Amendment to the United States Constitution.

A timely petition for certification was filed with the New Jersey Supreme Court. The petition for certification was denied on May 28, 1980.

REASONS FOR GRANTING THE WRIT

I. The due process clause of the Fourteenth Amendment to the United States Constitution requires a public college to provide a hearing to a former student prior to permanently excluding that former student from college grounds where the college's facilities are generally open to the public at large for a variety of functions.

Ocean County College is a public educational institution funded by the State of New Jersey. One of college's purposes is to serve and meet the needs of the local community. Various community functions are held on the Ocean County College campus. When a college opens its resources to the general public, even a non-student cannot be denied access to these resources without due process of law under the Fourteenth Amendment to the United States Constitution. Watson vs. Board of Regents of University of Colorado, 512 P.2d 1162, 1165; 182 Colo. 307, 313 (1973.

Students receiving disciplinary action from college officials do possess procedural due process rights. Courts have determined that these rights include adequate

notice of the charges, the chance to prepare to meet the charges, and a fair and impartial hearing. Buttny vs. Smiley, 281 F. Supp. 280 (D. Colo. 1968). These same procedural due process requirements must be given to non-students before they may be permanently denied access to a college's facilities. Dunkel vs. Elkins, 325 F. Supp. 1235 (D. Md. 1971). There is simply no logic in denying these recognized rights to a former student, since they apply to students and non-students alike.

Petitioner has never been accorded his procedural due process rights. The letter constituting the basis of Petitioner's trespass was issued by the Dean of Students without any hearing whatsoever. Petitioner has made numerous requests for a hearing, yet no hearing has ever been granted. The denial of Petitioner's due process rights is obvious.

CONCLUSION

For the reasons noted above, a Writ of Certiorari should issue to the judgment and opinion of the Appellate Division.

Respectfully submitted,

BERNARD LAUFGAS, Pro Se

Appendix 1

Superior Court--Ocean County
Law Division--Appeals
Appeal No. 18-78

State of New Jersey :
:
vs. :
: JUDGMENT OF CONVICTION
Bernard Laufgas :
:
Defendent :

The defendant having appealed a conviction entered by the Municipal Court of the Township of Dover on October 12, 1978, and this Court having conducted a plenary trial de novo on the record, and this Court having rendered a judgment of guilty on the charge of violation 2A:170-31 (TRESPASS)

It is on this 23rd day of March, 1979, ORDERED AND ADJUDGED that the defendant be and is sentenced to pay a fine of $25.00. Deft. given 30 days to make payment to the Ocean County Sheriff's Department.

Attorney for Defendant

Bernard Laufgas, Pro Se

/s/ William H. Huber
JUDGE
WILLIAM H. HUBER, J.S.C.

/s/ E. Kenneth Burdge,
E. KENNETH BURDGE, County Clerk

DATE: March 27, 1979

Appendix II

NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE COMMITTEE ON OPINIONS

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
A-2849-78

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

BERNARD LAUFGAS,

Defendant-Appellant.

Argued February 11, 1980 - Decided February 29, 1980

Before Judges Seidman, Michels and Devine.

On appeal from the Superior Court, Law Division, Ocean County.

Bernard Laufgas, appellant, argued the cause pro se.

Vincent J. Grasso, Assistant County Prosecutor, argued the cause for respondent (Edward J. Turnbach, Ocean County Prosecutor, attorney; Douglas C. King, Assistant County Prosecutor, of counsel and on the brief).

PER CURIAM.

Defendant was charged with trespassing on the property of the Ocean County College contrary to N.J.S.A. 2A:170-31. After trial in the municipal court he was found guilty and

fined $50. On appeal to the Superior Court he was again found guilty, but his fine was reduced to $25.

On this appeal defendant advances the following three contentions:

Point I OCEAN COUNTY COLLEGE IS A PUBLIC INSTITUTION OPEN TO THE GENERAL PUBLIC, CONSTITUTIONAL PRINCIPALS OF EQUAL PROTECTION, AND DUE PROCESS REQUIRES, AS A MINIMUM NOTIFICATION OF A VALID REASON TO EXCLUDE A PARTICULAR PERSON AND A OPPORTUNITY TO REFUTE THAT REASON BEFORE THAT PERSON MAY BE BANNED FROM COLLEGE GROUNDS.

Point II. THE STATE HAS FAILED TO SHOW THAT LETTER BANNING DEFENDANT FROM COLLEGE CAMPUS WAS ISSUED BY ONE WHO USED DUE PROCESS TO BANN NON-STUDENT MEMBER OF THE GENERAL PUBLIC FROM COLLEGE GROUNDS.

Point III. SINCE DEFENDANT WAS INITIALLY CHARGED WITH TRESPASS BECAUSE OF A CERTIFIED LETTER, AND SINCE THE STATE HAS STIPULATED THAT NO HEARING WAS HEARD, AND SINCE THAT COMPLAINT WAS NOT LATER AMENDED, A FIND- OF GUILTY ON TRESPASSING CHARGE FOR HIS PRESENCE ON THE OCEAN COUNTY COLLEGE PARKING LOT IS INVALID AS A VIOLATION OF DEFENDANT: DUE PROCESS RIGHTS TO BE NOTIFIED OF THE CHARGES AGAINST HIM.

These same three contentions were raised by him, verbatim, in the case of State of New Jersey v. Bernard Laufgas (A-1404-78). In an unreported opinion dated

October 22, 1979, this Court found the three points raised to be clearly without merit under R.2:11-3(e) (2). Accordingly they will not be reconsidered on this appeal.

With respect to all other contentions raised we have carefully reviewed the record and find them to be clearly without merit. R.2:11-3(e) (2).

The conviction and the fine imposed is affirmed.

Appendix 3

SUPREME COURT OF NEW JERSEY
C-721 SEPTEMBER TERM 1979

STATE OF NEW JERSEY,	:	
	:	
Plaintiff-Respondent,	:	
	:	
v.	:	ON PETITION FOR CERTIFICATION
	:	
BERNARD LAUFGAS,	:	
	:	
Defendant-Petitioner.	:	

To the Appellate Division, Superior Court:

A petition for certification of the judgment in A-2849-78 having been submitted to this Court, and the Court having considered the same;

It is ORDERED that the petition for certification is denied with costs.

WITNESS, the Honorable Robert N. Wilentz, Chief Justice, at Trenton, this 28th day of May, 1980.

/s/ Stephen W. Townsend
STEPHEN W. TOWNSEND, CLERK